Public Prosecutor v Ta Hsin Enterprise Sdn Bhd

HIGH COURT (KUCHING) — CRIMINAL APPEAL NO 42–02 OF 1998(II)
MUHAMMAD KAMIL J
14 AUGUST 1998

Public Authorities *— Environmental protection — Discharge of wastes into inland waters without licence — Whether Environmental Quality Act 1974 applies in Sarawak — Environment Quality (Sewage and Industrial Effluents) Regulations 1979 reg 8(1)(b)*

On 4 April 1997, the respondent — a factory sited in Pending Industrial Estate, Kuching, Sarawak — was found to have discharged effluents in excess of the amount prescribed under reg 8(1)(b) of the Environment Quality (Sewage and Industrial Effluents) Regulations 1979. The respondent was charged under s 25(1) of the Environmental Quality Act 1974 ('the EQA') for discharging wastes into inland waters without licence. The sessions court held that on the authority of *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 MLJ 23 ('the Bakun case'), the EQA did not apply to this case. The appellant appealed.

Held, allowing the appeal and setting aside the order of the sessions court:

The finding of the sessions court could not be supported as the EQA expressly applies to the whole of Malaysia by virtue of s 1(1) of the EQA. The Bakun case must be clearly understood in its context, that it applies in the circumstances peculiar to the case. In the instant case, the subject matter did not relate wholly to environment as such; it was concerned mainly with the discharge of waste into inland waters without a licence, in contravention of s 25 of the EQA. In this respect, there was no evidence to show that the power under the EQA had been ousted or precluded by any order, and also there was no such specific provision being made or provided for under the Sarawak Ordinance. Although Pending Industrial Estate is geographically within the state of Sarawak, it is not precluded from the operation of the EQA (see pp 751F–G, 752C–D and 753A–B); *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 MLJ 23 distinguished.

[Bahasa Malaysia summary

Pada 4 April 1997, penentang — sebuah kilang yang terletak di Estet Perindustrian Pending, Kuching, Sarawak — didapati telah melepaskan effluen-effluen melampaui jumlah yang ditetapkan di bawah peraturan 8(1)(b) Peraturan-Peraturan Kualiti Alam Sekeliling (Kumbahan dan Effluen-Effluen Perindustrian) 1979. Penentang dipertuduhkan di bawah s 25(1) Akta Kualiti Alam Sekeliling 1974 ('AKAS') kerana melepaskan buangan ke dalam perairan daratan tanpa lesen. Mahkamah sesyen memutuskan bahawa atas autoriti

A *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 MLJ 23 ('kes Bakun'), AKAS tidak terpakai kepada kes ini. Perayu membuat rayuan.

Diputuskan, membenarkan rayuan dan mengetepikan perintah mahkamah sesyen:

B Keputusan mahkamah sesyen tidak boleh disokong oleh kerana AKAS terpakai secara nyata kepada seluruh Malaysia disebabkan s 1(1) AKAS. Kes Bakun mestilah difaham secara jelas dalam konteksnya, bahawa ia terpakai dalam keadaan-keadaan yang khusus kepada kes tersebut. Dalam kes ini, isi perkara pada keseluruhannya tidak begitu C kena-mengena dengan alam sekeliling; ia adalah berkaitan terutamanya dengan pelepasan buangan ke dalam perairan daratan tanpa lesen, yang melanggar s 25 AKAS. Dalam hal ini, tiada keterangan untuk menunjukkan bahawa kuasa di bawah AKAS telah disingkirkan atau ditolak oleh mana-mana perintah, dan juga tiada peruntukan spesifik D yang telah dibuat atau diperuntukkan di bawah Ordinan Sarawak. Walaupun Estet Perindustrian Pending terletak di negeri Sarawak, ia tidak dihalang daripada operasi AKAS (lihat ms 751F–G, 752C–D dan 753A–B); *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 MLJ 23 dibeza.]

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Notes

For cases on public authorities, see 10 *Mallal's Digest* (4th Ed, 1996 Reissue) paras 1381–1462.

F **Cases referred to**

Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals [1997] 3 MLJ 23 (distd)

Trustees of the Kheng Chiu Tin Hou Kong & Burial Ground v Collector of Land Revenue (Housing & Development Board) [1992] 1 SLR G 425 (refd)

Legislation referred to

Environmental Quality Act 1974 ss 1(1), 4, 4A, 25, 25(1), (2), 51

Environment Quality (Prescribed Activities) (Environmental Impact H Assessment) Order 1987

Environment Quality (Prescribed Activities) (Environmental Impact Assessment) (Amendment) Order 1995

Environment Quality (Sewage and Industrial Effluents) Regulations 1979 reg 8(1)(b)

I Natural Resources and Environmental Board Ordinance 1949 (Sarawak)

Natural Resources and Environment (Prescribed Activities) Order 1994 (Sarawak)

Tun Abdul Majid (Deputy Public Prosecutor) for the appellant. A
Leonard Shim (*Reddi & Co*) for the respondent.

Cur Adv Vult

Muhammad Kamil J: The accused was charged as follows: B

> Bahawa kamu, Ta Hsin Enterprise Sdn Bhd pada 4 April 1997 jam lebih kurang 10.25 pagi di Lot 983, Jalan Tambatan, Kawasan Perindustrian Pending Kuching, dalam Negeri Sarawak *tanpa dilesen* di bawah s 25(1) Akta Kualiti Alam Sekeliling 1974 didapati telah melepaskan buangan iaitu effluen ke dalam perairan daratan dengan kandungannya melebihi kepekatan C yang ditentukan di bawah peraturan 8(1)(b) Peraturan-Peraturan Kualiti Alam Sekeliling (Kumbahan dan Effluen-Effluen Perindustrian) 1979 iaitu:
>
> (1) oksigen biokimia yang diperlukan (BOD 5 hari 20 degree C) yang mempunyai kepekatan sebanyak 3200 mg/L iaitu melebihi had piawai 50mg/L yang ditentukan;
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> (2) oksigen kimia yang diperlukan (COD) yang mempunyai kepekatan D sebanyak 451mg/L iaitu melebihi had piawai 100 mg/L;
>
> (3) pepejal terampai yang mempunyai kepekatan sebanyak 517mg/L iaitu melebihi had piawai 100mg/L;
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> dan dengan ini kamu telah melakukan satu kesalahan di bawah s 25(1) Akta Kualiti Alam Sekeliling 1974 dan boleh dihukum di bawah s 25(3) Akta E yang sama.

At the hearing before the sessions court judge, the defendant raised a preliminary objection that the Environmental Quality Act 1974 ('the EQA') did not apply to this case and the court upheld the objection and ordered the accused to be discharged not amounting to an acquittal. F

The appellant appealed against the order of the sessions court judge on two grounds:

(1) that the sessions court judge had erred in law and in fact in holding that the EQA did not apply to Sarawak in respect of the offence under s 25(1) in that: G
   (a) he failed to consider the subject matter of the offence, ie discharging waste into inland waters without licence;
   (b) he failed to consider that the act complained of is the act of discharging waste and not the receiving end, ie the inland waters; and H
(2) that the sessions court judge erred in law and in fact in holding that the discharge of waste from the factory lies wholly in the state of Sarawak in that:
   (a) he failed to hear the evidence proper before discharging the respondent; I
   (b) he failed to consider the deeming provision of s 25(2) of the Act.

A The appellant prayed that the order of discharge be set aside or that such other order might be made thereon as justice may require.

The respondent is a factory sited on Lot 983, Jalan Tambatan, Pending Industrial Estate, Kuching. On 4 April 1997, the respondent was found to have discharged effluents which were in excess of the amount prescribed B under reg 8(1)(b) of the Environment Quality (Sewage and Industrial Effluents) Regulations 1979 into the inland waters. Under s 25(1) of the EQA, a person who discharges waste must have a licence issued to him by the relevant authority.

There is no dispute as to the facts of this case.

C Learned senior federal counsel, Tun Abdul Majid submitted that the EQA does apply to the state of Sarawak and it is an offence under s 25(1) thereof to discharge waste into the inland waters of Sarawak. The essence of the charge against the accused is that the accused had discharged the effluents from the factory into the inland waters.

D Learned counsel for the respondent, Mr Leonard Shim submitted that the learned sessions court judge was correct in holding that Pending Industrial Estate lies in the state of Sarawak and that the environmental issue was to be determined by the court. He supported the view of the sessions court judge that the EQA had no application to this case. The learned sessions court judge in his judgment said:

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> If the 'environment' upon which the activity, ie discharge of waste from factory lies wholly within the state of Sarawak, ie land and water, then the Bakun case (ie *Ketua Pengarah Jabatan Alam Sekitar & Anor v Kajing Tubek & Ors and other appeals* [1997] 3 MLJ 23) is already authoritative in stating that the EQA will not apply. No more needs to be said.

F With respect, it is plain that the finding of the learned sessions court judge cannot be supported as the EQA expressly applies to the whole of Malaysia. Section 1(1) of the EQA states:

> This Act may be cited as the Environmental Quality Act 1974 and shall apply to the whole of Malaysia.

G The fundamental rule of interpretation of a statute is to ascertain the intention of Parliament. If the words of a statute are in themselves precise and unambiguous, the court must give effect to them according to their natural and ordinary meaning as the words themselves best declare the intention of Parliament. If, however, adhering to their grammatical and H ordinary meaning would lead to some absurdity or some repugnancy or inconsistency with the other parts of the statute, the grammatical or ordinary sense of the words may be modified so as to avoid that absurdity and inconsistency, but no further. See *Trustees of the Kheng Chiu Tin Hou Kong & Burial Ground v Collector of Land Revenue (Housing & Development Board)* [1992] 1 SLR 425. And I do not think that it is the intention of I Parliament when passing the EQA that it applies to all states in Malaysia except Sarawak. Parliament has enacted the EQA to be made applicable to

the entire nation. Subsidiary legislations relating thereto were made by the executive delegated with the powers to do so. This obviously was to give effect to the meaning and purpose of the EQA.

Section 51 of the EQA empowers the Minister to make regulations for the control or the regulation of certain acts, with more detail for the carrying out or the implementation of the provisions of the law. Thus the Environment Quality (Sewage and Industrial Effluents) Regulations 1979 was enacted.

Generally, the court has no power to restrict the application of an Act of Parliament contrary to its express provision that the Act shall apply to the whole of Malaysia, save in cases where such an application is qualified by an amending Act or Order, for the particular purpose.

The Bakun case must be clearly understood in its context, that it applies in the circumstances peculiar to the case. It was concerned mainly with the environmental protection in the vicinity of Bakun, and in that particular case, whether the EQA applies to Sarawak, or whether the Director General of the Environmental Department can make an order in relation to Sarawak. The Court of Appeal held that the EQA did not apply to the environment surrounding the Bakun area in Sarawak which was subjected to the Sarawak Natural Resources and Environmental Board Ordinance 1949.

In that case, the Malaysian government decided in 1986 to proceed with a hydroelectric dam in Bakun in Sarawak. At 204m in height, it would be the largest dam in South East Asia. About the size of Singapore would be flooded. In 1994, a special committee was set up to study the project's impact on the environment. The Environment Minister gave the assurance that the detailed environmental impact assessment would be submitted to the Department of Environment ('the DOE') and it would be made available to the public.

In April 1995, the Director General of the DOE stated that the Ministry of Environment had not approved the project because the dam project came under the purview of the Sarawak Natural Resources and Environment Board Ordinance 1949. This change was effected by the Sarawak Natural Resources and Environment (Prescribed Activities) Order 1994 which came into force on 1 September 1994.

The Minister of Environment by Gazette Notification dated the same day, 20 April 1995 excluded the construction of dams from the purview of the EQA and subjected it to the authority of the Sarawak Ordinance. Prior to this, dams are a prescribed activity to which the EQA applies by virtue of the Environment Quality (Prescribed Activities) (Environmental Impact Assessment) Order 1987. The exclusion of dams was made by an amendment Order of 1995, made pursuant to s 4A of the EQA, with retrospective effect from 1 September 1994.

The chairman of the State Natural Resources and Environment Board gave approval to Ekran Bhd on 27 March 1995. On the same day, the amendment order was promulgated and came into force on 20 April 1995, the date of its publication.

A In the instant case, the subject matter does not relate wholly to environment as such, it is concerned mainly with the discharge of waste into inland waters without a licence, in contravention of s 25 of the EQA. In this respect, there is no evidence to show that the power under the EQA has been ousted or precluded by any order, and also there is no B such specific provision being made or provided for under the Sarawak Ordinance. Although Pending Industrial Estate is geographically within the state of Sarawak, it is not precluded from the operation of the EQA. In other words, the Bakun case does not propose the total ban on all activities per se, for instance, as in this case; it is specifically applicable in cases of the construction of dams in the state of Sarawak, eg the Bakun dam. It C does not make sense to suggest that a factory in Sarawak may discharge its effluent far exceeding the limits prescribed in reg 8(1)(b) of the 1979 Regulations without a licence. It is a fallacy to think that, as in this case, the inland waters in the state of Sarawak are exclusive, therefore, the EQA is inapplicable in Sarawak.

D In the circumstances, I would allow the appeal and the order of the lower court is hereby set aside. The case is remitted to the sessions court with an order for it to proceed with the hearing of the case.

Appeal allowed.

E Reported by Jafisah Jaafar

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